

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS

TYLER DIVISION

JOHN CLOUD, #749521

§

VS.

§

CIVIL ACTION NO. 6:10cv650

KISHA STOTTS, ET AL.

§

ORDER OF DISMISSAL

The above-entitled and numbered civil action was heretofore referred to United States Magistrate Judge John D. Love. The Report of the Magistrate Judge, which contains proposed findings of fact and recommendations for the disposition of such action, has been presented for consideration. Plaintiff has filed objections.

Having made a *de novo* review of the objections raised by Plaintiff to the Report, the Court is of the opinion that the findings and conclusions of the Magistrate Judge are correct and Plaintiff's objections are without merit. Specifically, the Magistrate Judge found that at least five of Plaintiff's previous civil rights lawsuits had been dismissed as frivolous or for failure to state a claim on which relief may be granted. Plaintiff contends that some of those lawsuits were filed as habeas corpus actions and/or were "fully funded," meaning Plaintiff paid the full filing fee and was not proceeding *in forma pauperis* in certain cases dismissed as frivolous. However, an examination of the respective dockets reveals that the cases Plaintiff contends were habeas actions were filed as civil rights actions and dismissed as such, even if certain of the claims they presented were dismissed without prejudice in order to file as habeas petitions. Therefore, that contention is without merit.

Further, a civil rights lawsuit need not have been pursued *in forma pauperis* in order for it to be dismissed as frivolous pursuant to 28 U.S.C. § 1915A and be counted as such for “three strikes” purposes. *See* 28 U.S.C. § 1915(g). Therefore, that contention is without merit as well. Finally, Plaintiff appears to assert that it should be obvious he has been threatened with serious physical injury; however, he does not plead such in his complaint, nor did he seek a protective order for himself. Therefore, he has no basis for avoiding dismissal pursuant to § 1915(g).

Accordingly, the Court is of the opinion that the findings and conclusions of the Magistrate Judge are correct. Therefore the Court hereby adopts the findings and conclusions of the Magistrate Judge as the findings and conclusions of the Court. It is accordingly

ORDERED that the complaint is **DISMISSED** with **PREJUDICE** pursuant to 28 U.S.C. § 1915(g). All motions by either party not previously ruled on are hereby **DENIED**.

So ORDERED and SIGNED this 27th day of April, 2011.

A handwritten signature in black ink, appearing to read 'Leonard Davis', written over a horizontal line.

LEONARD DAVIS
UNITED STATES DISTRICT JUDGE